

SENATE BILL 1704
By Haynes

AN ACT amend Tennessee Code Annotated, relative to
safeguarding sovereignty in trade.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known, and may be cited, as the "Safeguarding
Tennessee Sovereignty in Trade Act."

SECTION 2. The legislature finds that:

(a) Democratic, accountable governance in the states generally, and specifically the authority granted to the legislative branch by Tennessee's constitution, is being undermined by international commercial and trade rules enforced by the World Trade Organization (WTO) and established by the North American Free Trade Agreement (NAFTA), and is further threatened by similar provisions in an array of pending trade agreements.

(b) Today's trade agreements have impacts which extend significantly beyond the bounds of traditional trade matters such as tariffs and quotas, and instead grant foreign investors and service providers certain rights and privileges regarding operations within a state's territory, subject state laws to challenge as barriers to trade in the binding dispute resolution bodies that accompany the pacts, and place limits on the future policy options of state legislatures.

(c) NAFTA grants foreign firms new rights and privileges for operating within a state that exceed those granted to U.S. businesses under state and federal law. NAFTA has already generated regulatory takings cases against state and local land use decisions, state environmental and public health policies, adverse state court rulings, and state and local contracts that would not have been possible in U.S. courts.

(d) When states agree to government procurement provisions contained in trade agreements, common economic development and environmental policies, such as buy-local laws, policies to prevent offshoring of state jobs and recycled content laws, could be subject to challenge as barriers to trade as they contradict the obligations in the trade agreements.

(e) Trade agreements also curtail state regulatory authority by placing constraints on future policy options. The WTO services agreement could undermine state efforts to expand health care coverage and rein in health care costs, and it places constraints on state and local land use planning. New negotiations in the services area could have additional implications for state regulation of water, energy, higher education, professional licensing and more.

(f) Despite the indisputable fact that international trade agreements have a far-reaching impact on state and local laws, federal government trade negotiators have failed to consult in a meaningful way with state legislatures when seeking the consent of states to comply with trade agreement provisions.

(g) Consequently, a statutory mechanism that requires federal trade negotiators to seek consent from state legislatures prior to binding states to conform their laws to the terms of international commercial agreements is necessary to adhere to the tenets of federalism and state sovereignty.

SECTION 3.

(a) Two (2) state legislative points of contact (SLPCs) shall be appointed at the beginning of each legislative session; one (1) to be appointed jointly by the majority and minority leaders in the senate, and one (1) to be appointed jointly by the majority and minority leaders of the house. The purposes of the SLPCs are to:

(1) Serve as the state's official liaisons with the federal government and the legislature's liaisons with the governor on trade-related matters;

(2) Serve as the designated recipients of federal requests for consent or consultation regarding investment, procurement, services or other provisions of international trade agreements which affect state law or regulatory authority reserved to the states;

(3) Transmit information regarding federal requests for consent to the governor, the attorney general, and all appropriate legislative committees;

(4) Inform all members of the legislature on a regular basis about ongoing trade negotiations and dispute settlement proceedings with implication for the state more generally;

(5) Communicate the interests and concerns of the legislature to the United States trade representative (USTR) regarding ongoing and proposed trade negotiations; and

(6) Notify the USTR of the outcome of any legislative action.

(b) Consent for the state to agree to participate in any provision of a trade agreement shall only occur through an act of the state legislature.

(c) The following actions are required before the USTR may consider the state to have consented to the terms of a trade agreement:

(1) When a request has been received, the governor, majority or minority leader, or ranking member of the appropriate committee of jurisdiction may submit to the legislature, on a day on which both houses are in session, a copy of the final legal text of the agreement, together with:

(A) An explanation as to how the agreement of the state to the specific provisions of the agreement will change or affect existing law;

(B) A statement of any administrative action proposed to implement these trade agreement provisions in the state; and

(C) A draft of legislation authorizing the state to agree to participate regarding only the specific listed provisions of the agreement in question.

(2) A public hearing occurs before the legislature votes on the bill; and

(3) The bill authorizing the state to agree to participate regarding only specific listed provisions of the agreement is enacted into law.

(d) It is the sense of this legislature that the Congress of the United States should pass legislation instructing the USTR to fully and formally consult individual state legislatures regarding procurement, services, investment, or any other trade agreement rules that impact state laws or authority before negotiations begin and as they develop, and to seek consent from state legislatures prior to binding states to conform their laws to the terms of international commercial agreements. Such legislation is necessary to ensure the prior informed consent of this state with regard to future international trade and investment agreements.

(e) The state attorney general shall notify the USTR of the policies set forth in subsection (c) in writing no later than May 1, 2005, and shall provide copies of such notice to the speaker of the senate, speaker of the house of representatives, the governor and to the state's federal congressional delegation.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring

it.